

Docket No. F-9052

Ser. No. 10/576,351

**REMARKS**

Claims 1 and 32-69 are pending; and of these, claims 1, 32, 38, 42 and 53 have been amended. Reconsideration of the instant application in view of this Paper is respectfully requested.

The Examiner has maintained the rejection of (1) claims 1, 34, 38-40, 46-58, 66, 68 and 69 under 35 U.S.C. 102(b) as being anticipated by Gotfried (U.S. Pat. No. 5,429,641); (2) claims 32, 33, 59 and 60 under 35 U.S.C. 103(a) as being unpatentable over Gotfried; (3) claims 35, 41-44, 61-64 and 67 under Section 103(a) as being unpatentable over Gotfried in view of Nelson (U.S. Pat. No. 6,562,042); (4) claims 36 and 37 under Section 103(a) as being unpatentable over Gotfried in view of Lower (U.S. Pat. No. 4,612,920); and (5) rejected claims 45 and 65 under Section 103(a) as being unpatentable over Gotfried in view of Nelson and further in view of Lee et al. (U.S. Pat. No. 3,939,498). Applicant has amended Applicant's independent claims 1 and 53, and with respect to these claims, as amended, and their respective dependent claims, the Examiner's rejections are respectfully traversed.

Docket No. F-9052

Ser. No. 10/576,351

Initially, Applicant reiterates Applicant's remarks as provided in Applicant's response dated July 22, 2009. Still though, Applicant has amended Applicant's independent claims 1 and 53 to further and otherwise clarify the invention thereof. Claims 32, 38 and 42 have been amended to clarify recitation of the features therein and to address formal matters.

As shown hereinabove, Applicant has amended Applicant's claim 1 to recite Applicant's system for minimally invasive treatment of a fracture of a bone with respect to Applicant's recited guide element and fixation element. More particularly, recitation of Applicant's guide element and second connecting section and their relative positioning have been clarified such that Applicant's second connection section "provid[es] a seat comprising external seating surfaces, and said shaft portion of said fixation element contacts said external seating surfaces so that said shaft portion is free from tilting and moveable axially with respect to said external seating surfaces, said positioning providing substantial alignment of said shaft portion along a longitudinal axis of said second connecting section for back and forth movement of said fixation element along said longitudinal axis during healing of the fracture, and said movement and positioning providing a non-rigid connection between said guiding element and said fixation element." Applicant's claim 53 has been similarly amended. Applicant respectfully submits that Applicant's amendments are supported throughout Applicant's disclosure.

Docket No. F-9052

Ser. No. 10/576,351

At page 11 of the Office Action, the Examiner has acknowledged that Gotfried's screw II is slidably and tightly received within its sleeve III. When received within the sleeve III, Gotfried's screw II is then retracted or pulled back into the sleeve III, which results in its dislodged bone fragment into which the screw II is threaded being pulled toward the bone from which the fragment dislodged. Once retracted to the desired positioning, Gotfried's screw establishes a rigid connection between the bone and dislodged fragment. Nowhere in Gotfried is there any teaching or suggestion of movement of its screw II relative to its sleeve III during healing of a fracture.

As such, and in view of the rigid connection established by Gotfried's screws II as provided throughout its disclosure; and together with Gotfried's continued failure to teach or suggest Applicant's anti-rotation screw, Gotfried fails to teach or suggest Applicant's construction as now recited. As a result of this deficiency, Gotfried, accordingly, fails to teach or suggest an ability to provide for a system for healing a fracture which allows for (1) compensation of bone movement in an axially displaceable manner while (2) preventing rotational movement thereof. This is particularly the case since Gotfried's screws II are pulled back into its sleeves III to pull a fractured bone fragment toward a non-fractured fragment to establish a rigid connection therebetween. Because of this, Gotfried is unable to teach or suggest Applicant's system in which an ability for

Docket No. F-9052

Ser. No. 10/576,351

back and forth axial movement of Applicant's fixation element relative to Applicant's guide element optimizes healing capability of a fracture.

Therefore, Applicant respectfully submits that Gotfried, Nelson, Lower and Lee et al., either when taken alone or in combination, fail to teach or suggest Applicant's construction as recited in Applicant's claims, as amended; more specifically, in which such construction comprises a seat comprising external seating surfaces, (the) shaft portion of [Applicant's] fixation element contact[ing] said external seating surfaces so that said shaft portion is free from tilting and moveable axially with respect to said external seating surfaces, said positioning providing substantial alignment of said shaft portion along a longitudinal axis of said second connecting section [of Applicant's guiding element] for back and forth movement of said fixation element along said longitudinal axis during healing of the fracture, and said movement and positioning providing a non-rigid connection between said guiding element and said fixation element.

Applicant respectfully requests a one (1) month extension of time for responding to the Office Action. The fee of \$ 130.00 for the extension is provided for in the charge authorization presented in the PTO Form 2038, Credit Card Payment form, provided herewith.

If there is any discrepancy between the fee(s) due and the fee payment authorized in the Credit Card Payment Form PTO-2038 or the Form PTO-2038 is

Docket No. F-9052

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No fee is believed due. If there is any fee due the USPTO is hereby authorized to charge such fee to Deposit Account No. 10-1250.


In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited.

Respectfully submitted,

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